IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4194 of 2004
with
SPECIAL CIVIL APPLICATION No 665 of 2004
with
Special Civil Application No.923 of 2004
with
Special Civil Application No.976 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHTA KRINITA ASHOKBHAI

Versus

STATE OF GUJARAT

Appearance:
Mr. P.M. Thakkar, Senior Advocate, with
MR PRADEEP PATEL for Petitioner No. 1-10
Ms. Reeta Chandarana AGP for Respondent No. 1-2
MR MITUL K SHELAT for Respondent No. 3
MR AR MAJMUDAR for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 28/07/2004

COMMON ORAL JUDGEMENT

1. In this group of petitions, the petitioners-students have prayed that this Court may issue a writ, order or direction in the nature of mandamus quashing and setting aside the communication dated 8.8.2003 issued by the Assistant Director, Indian Medical & Homeopathy Board, Gandhinagar. By the impugned communication, the respondent No.1 stated that the admission of the petitioners in the Degree Course in Homeopathy known as Bachelor of Homeopathy Medicine and Surgery ('B.H.M.S') with the respondent No.4-College for the Academic Year 2002-03, on NRI (Non-Resident Indian) seats or NRI sponsored seats, is cancelled as their admission is contrary to the instructions issued by the Government earlier in this behalf. It is the case of the petitioners that the impugned order dated 8.8.2003 is contrary to the judgment of the Supreme Court in T.M.A. Pai Foundation vs State of Karnataka reported in [2002] 8 SCC p.481. The petitioners have, therefore, prayed that the impugned action of the respondents-Authorities be declared as illegal, mala fide, arbitrary and violative of Article 14 of the Constitution of India. The petitioners have further prayed that this Court may be pleased to direct the respondent-University to enroll the petitioners as students, take their examination and, thereafter, declare the results of B.H.M.S. Degree Course of the petitioners who are given admission in the respondent No.4-College on NRI/NRI sponsored seats for the Academic Year 2002-2003. The petitioners have further submitted that the resolution dated 8.8.2003 is also violative of rules of natural justice.

2. At the time of admission/hearing of the matters, this Court has admitted the matters and granted interim relief.

3. All these matters were placed for final hearing along with Special Civil Applications Nos.1061 of 2004 and 4187 of 2004 before summer vacation. It be noted that the petitioners-students in Special Civil Applications Nos.1061 of 2004 and 4187 of 2004 raised identical issues on similar facts. After hearing the parties, this Court, by C.A.V. Judgment dated 6th July 2004, allowed Special Civil Applications Nos.1061 of 2004 and 4187 of 2004 and quashed and set aside the impugned Government Resolution dated 8.8.2003.

4. The learned advocates appearing for both the parties have submitted that common question of law and facts are involved in this group of writ petitions along with Special Civil Applications Nos.1061 of 2004 and 4187 of 2004 and they adopt the same contentions which were raised in Special Civil Applications Nos.1061 of 2004 and 4187 of 2004 in this group of petitions. It is, therefore, submitted by the learned advocates for the parties that this group of writ petitions may also be disposed of on the basis of the C.A.V. Judgment dated 6th July 2004, rendered by this Court in Special Civil Applications Nos.1061 of 2004 and 4187 of 2004, without adverting to the facts and dealing with the contentions elaborately.

5. With the consent of the learned advocates for the parties, the Court passes the following order.

6. In the result, the present writ petitions are allowed. The impugned Government Resolution dated 8.8.2003 in each petition is quashed and set aside. However, it will be open to the State Government to pass a fresh order. If the State Government decides to pass a fresh order, then the State Government shall hear the students and the college and, after considering the principles laid down by the Supreme Court in T.M.A. Pai Foundation vs State of Karnataka reported in [2002] 8 SCC p.481, and, in Islamic Academy of Education and another vs. State of Karnataka and others, reported in (2003) 6 Supreme Court Cases 697, pass an appropriate order in accordance with law, within four months from today. Rule is made absolute with no order as to costs.

(K.M. Mehta, J.)

(swamy)